

Appl. No. 10/032,652
Amdt. dated September 23, 2003
Reply to Office action of July 28, 2003

REMARKS/ARGUMENTS

Claims 1, 3 to 11 and 18 to 22 are in the application. Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 6,127,293 to Kimura et al. (hereafter Kimura). Claims 3 to 9 and 18 to 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura. Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura in view of United States Patent 2,401,997 to Whitman (hereafter Whitman).

Claims 21 and 22 are newly added to clarify points raised by the Examiner and are supported in specification at Page 10, Lines 14 to 19, and Page 15, Lines 21 to 23. They will be considered as rejected in the same fashion as the base claims.

Claims 12 to 17 stand withdrawn from consideration as being directed to a non-elected invention. Claims 12 to 17 have been cancelled and submitted in a divisional application.

The rejections under 35 U.S.C. 102 and 103 are respectfully traversed.

AMENDMENTS TO THE SPECIFICATION

A typographical error was corrected on page 10 of the specification.

RESPONSE TO 35 U.S.C 102 REJECTIONS

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Kimura. All of the Kimura structures require a **woven structure**. Such a structure is completely inoperable for the purpose for applicant's purposes. A stretched, woven structure leaks and cannot prevent crown hydration as desired by applicant.

The Kimura reference does not teach water impermeability and is in fact silent on the whole matter of impermeability. The subject invention has as one of its objectives the provision of a cover that prevents crown hydration. This cannot be done with the Kimura product because it incorporates pores or apertures, and thus is not watertight or water impermeable. This explains the advantage of the Stoller system over prior art because it provides a lightweight cover

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that is watertight.

Applicant's layered sheet is made of oriented layers having orientation of each layer at an angle to the other layer. No such structure is disclosed or suggested in Kimura. Furthermore, the enclosed declarations, which show products disclosed and claimed in this application have solved a major problem in the art. No such information is disclosed in Kimura. Kimura does not even recognize the problem of crown hydration, let alone applicant's solution thereto.

Accordingly, anticipation cannot exist in light of the decision rendered in In re Bond, 910 F.2d 831, 15 USPQ2D -- 1566 (Fed. Cir. 1990).

"For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference. These elements must be arranged as in the claim under review,....."

Additionally, the Examiner's attention is directed to the decision in:

Structural Rubber Prod. Co., v. Park Rubber Co., 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984).

"Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention. Anticipation is not shown even if the differences between the claims and the prior art references are 'insubstantial' and the missing elements could be supplied by the knowledge of one skilled in the art."

Accordingly, this rejection is respectfully eclipsed and withdrawal thereof is requested.

RESPONSE TO 35 U.S.C 103 REJECTIONS

Claims 3 to 9 and 18 to 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura. This rejection is respectfully traversed. The only orientation taught in Kimura relates to a woven fabric. It is well support throughout the specification that such a woven fabric will not work. The stretching of the Kimura product breaks the weave of the fabric and causes leaks therein. For this reason, the Kimura product is not suitable for applicant's purposes. Each layer of applicant's product is formed from an oriented fabric. The angle between the orientation in each

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layer provides great strength to the fabric while maintaining low weight.

The Examiner alleges that the relative position of the orientation in each layer is obvious. The references cited do not support this allegation. The cited prior does not recognize the problems, crown hydration for example, addressed by the applicant, let alone applicant's particular water-impermeable, light weight, sheet having at least angled oriented layers, as a solution to the problem.

Furthermore, applicant has submitted declarations of experts in the field of golf course maintenance, to support the claims that this product solves at least one major problem in the art. Crown hydration (discussed on Page 2, Lines 16 to 22) is the major problem solved. Loss of and reduced reapplication of fertilizer are also defined as an advantages. Only applicant's teachings recognize the problem and provide a solution. As such the different structure of Kimura, with its woven layers, can neither anticipate nor render the claimed invention obvious.

For Claims 2 to 5 and 18 to 22, the Examiner asserts that it would have been obvious to experiment with the Kimura invention to find angles of striation relative to edges and relative to each other that would optimize the strength of the sheet. This fails to establish a prima facie case of obviousness. The examiner must show that the reference teaches that such a specific angle or orientation might be advantageous or desirable. The Kimura reference does not suggest that the angle of orientation is any more than incidental to the weaving of the materials together. The Examiner must alternatively prove that there was a reason for a person skilled in the art to attempt the experimentation to find optimum angles. This reason must come from the prior art. The Examiner admits that Kimura is silent on issues of striation angles or that the angle might add or detract from the strength of the sheet. The examiner gives no other references.

Again Kimura does not mention the ability to be water tight but only teaches that a bag made of the material might be able to "drain or filter" (see Kimura Col.1 Line 53) or hold powders or resin beads (Col. 1 Line 36), not water. Such disclosure is a clear teaching away from applicant's required

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water impermeability.

Accordingly, withdrawal this rejection is respectfully requested.

Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura in view of Whitman. Whitman is alleged to compensate for the deficiencies of Whitman by disclosing the hold down methods. Said Whitman does not compensate for the other deficiencies of Kimura, this combination of references cannot render the claimed invention obvious. Withdrawal of this rejection is therefore requested.

Applicant's advantages are clearly disclosed, plainly discussed and heavily emphasized in applicant's claims and specification. These factors bring this application into the realm of U. S. v. Adams, 383 U.S. 39, 48-49; 148 USPQ 479, 482 (1966), which includes the following interpretation of the patent law:

"Novelty and nonobviousness, as well as utility, are separate tests of patentability. All must be satisfied in a valid patent.

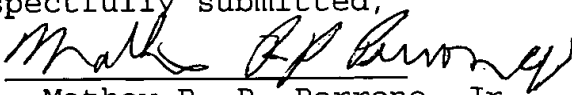
"While patent claims limit invention, and specification cannot be utilized to expand patent monopoly, claims are construed in light of specification and both are read with a view to ascertaining the invention."

CONCLUSION

Accordingly, all rejections having been overcome by amendment or traversed by remarks, reconsideration and allowance of the instant application is respectfully requested. Applicant's attorney remains amenable to assisting the Examiner in the allowance of this application.

Applicant respectfully requests that a timely notice of allowance be issued in this case.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited by express mail addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on or before October 9, 2003.


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